

## Chapter 15A-35 - Appeals and Variances

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## Chapter 15A-35 Appeals and Variances

### 15A-35-01 Appeals

- A. **Administrative Appeal Required.** As a condition precedent to judicial review, each adversely affected person shall timely and specifically challenge the land use authority's decision, in accordance with these ordinances.
- B. **Authority.** The appeal authorities set forth in this Code act in a quasi-judicial manner and as the final arbiter of issues involving the interpretation or application of land use ordinances.
- C. **Who May Appeal.** The applicant, a board or officer of the City, or any person adversely affected by the land use authority's decision administering or interpreting a land use ordinance may, within the time period provided in this Code, appeal that decision to the designated appeal authority by alleging that there is an error in any order, requirement, decision, or determination made by the land use authority in the administration or interpretation of this Code.
- D. **Time for Appeal.** An appeal of a decision of a land use authority to an appeal authority must be filed in writing with the Community Development Department within 10 calendar days of the date the land use authority issues a written decision or approval of the minutes of a meeting at which the decision was made, if applicable, whichever occurs first.
- E. **Information to be Presented.**
1. An appellant must first present any and all information to the land use authority which it intends to raise before the appeal authority. The appellant may not bring new information for consideration before the appeal authority that had not been previously presented to the land use authority during its consideration of the matter.
  2. An appellant must present to the designated appeal authority every theory of relief that it can raise in district court.
  3. No new information that was not previously presented to the land use authority may be presented on appeal.
- F. **Review of the Record of the Land Use Authority.**
- 1 The appeal authority's review of decisions of a land use authority shall be confined to the administrative record developed by the land use authority unless the appeal

authority determines that the record is incomplete or deficient.

2. If the appeal authority determines that the record is incomplete or deficient, it may review the matter de novo.

G. **Burden of Proof.** The appellant has the burden of proving that the land use authority erred.

H. **Standard of Review.**

1. **Legal Issues - Correctness Standard.** The appeal authority shall determine the correctness of a decision of the land use authority or administrative official in its interpretation and application of a land use ordinance. Because no specialized knowledge is necessary to make such a determination, no deference is given to the land use authority or administrative official provided. However, the appeal authority shall not overrule that decision as a matter of law without the advice of its legal counsel.
2. **Factual Issues and Other Issues - Arbitrary and Capricious Standard.** Land use authorities and administrative officials have specialized knowledge in the field of planning and land use and are charged with and are experienced in implementing the goals and policies of the community as adopted by and under the supervision of elected representatives of the public. Accordingly, they should be allowed a comparatively wide latitude of discretion; and their actions endowed with a presumption of correctness and validity which an appeal authority should not interfere with unless it is shown that there is no reasonable basis to justify the action taken, and that, therefore, the determinations made were so unreasonable as to be arbitrary and capricious. It is not the appeal authority's prerogative to substitute its judgment for that of the land use authority where the record discloses a reasonable basis for the land use authority's determinations.
3. **Conditional Use Permits.** The standard of review for appeals concerning Conditional Use Permits is set forth in the Conditional Use Permit Chapter of this Code.

I. **Scope of Authority.** Only those decisions in which a land use authority has applied a land use ordinance to a particular application, person, or parcel may be appealed to an appeal authority.

J. **Effective Date of Appeal Authority Decision.** A decision of an appeal authority takes effect:

1. **Board of Adjustment.** At the meeting in which the decision is made.
2. **Other Appeal Authorities.** On the date when the appeal authority issues a written decision or approval of the minutes of the meeting at which the decision was made, if applicable, whichever occurs first.

## 15A-35-02 Variances

- A. **Who May Request a Variance.** Any person, authorized agent in writing, or entity desiring a waiver or modification of the requirements of the land use ordinance as applied to a parcel of property that he owns, leases, or in which he holds some other beneficial interest, may apply to the appeal authority for a variance from the terms of the land use ordinance.
- B. **Standards for Variances.**
  1. A variance may only be granted if:
    - a. Literal enforcement of the land use ordinance would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the land use ordinances.
    - b. There are special circumstances attached to the property that do not generally apply to other properties in the same zone district.
    - c. Granting the variance is essential to the enjoyment of a substantial property right possessed by other properties in the same zone district.
    - d. The variance will not substantially affect the General Plan and will not be contrary to the public interest.
    - e. The spirit of the land use ordinance is observed and substantial justice done.
  2. In determining whether or not enforcement of the land use ordinance would cause unreasonable hardship under Subsection B 1 above, the appeal authority may not find an unreasonable hardship unless the alleged hardship:
    - a. Is located on or associated with the property for which the variance is sought; and
    - b. Comes from circumstances peculiar to the property, and not from

conditions that are general to the neighborhood.

- b. Is not self-imposed or economic. A hardship inflicted on a property by action of a previous owner is considered to be self-imposed and shall not be reason for granting a variance to the current owner.
- 3. In determining whether or not there are special circumstances attached to the property under Subsection B 1, the appeal authority may find that special circumstances exist only if the special circumstances:
  - a. Relate to the hardship complained of; and
  - b. Deprive the property of privileges granted to other properties in the same zone district.
- C. **Burden of Proof.** The applicant shall bear the burden of proving that all of the conditions justifying a variance have been met.
- D. **Effect.** Variances run with the land.
- E. **Use Variances Not Allowed.** The appeal authority may not grant use variances.
- F. **Imposing Additional Requirements.** In granting a variance, the appeal authority may impose additional requirements on the applicant that will:
  - 1. Mitigate any harmful affects of the variance; or
  - 2. Serve the purpose of the standard or requirement that is waived or modified.

### 15A-35-03 District Court Review of Decision

- A. Any person adversely affected by a final decision made in the exercise of or in violation of the provisions of this Title may file a petition for review of the decision with the district court within 30 days after the land use decision is final.
- B. No person may challenge in district court the City's land use decision made under this title or under a regulation made under authority of this Code, until that person has exhausted their administrative remedies as provided herein and in the Land Use Development and Management Act in Utah Code Annotated, if applicable.

- C. The filing of a petition in the district court and its review shall be in governed by the provisions of Land Use Development and Management Act in Utah Code Annotated.